SUPREME COURT OF THE UNITED STATES.

No. 86.

JOHN D. AMIS, PLAINTIFF IN ERROR,

vs.

NATHAN SMITH.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF MISSISSIPPI.

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S. D. Langtree, Print.

THE UNITED STATES OF AMERICA.

The President of the United States to the Judge of the District Court of the United States, for the Northern District of Mississippi, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea, which in the said district court before you, between Nathan Smith, plaintiff, and Daniel F. Alexander, Edwin F. Watkins, Lemuel N. Fields, Madison Walthall, Reading S. Blount, Richardson Owen, Edward Featherston, James Eckford, Willaim Covington, McKinney Holderness, Seth Peebles, William B. Lightfoot, William P. Puller, Elisha H. Sharp, Richard E. Meade, William Dowsing, sr. James Jones, Ewing F. Calhoun, William Woodward, Richard H. Brown, John B. Jones, John D. Amis, Alexander Sorsby, William Dowsing, jr., William W. Humphries and Armstrong J. Hodges, surviving partners of William Cockrell, deceased, using the name and style of Real Estate Banking Company, of Columbus, Mississippi, defendants, a manifest error hath happened to the great damage of the said John D. Amis, as by his complaint appears.

We being, that error, if any, should be corrected, and full and speedy justice done to the parties aforesaid, in this behalf, do command you that if judgment be therein given, that then, under your seal, distinctly and openly, you send the records and proceedings aforesaid, with all things concerning the same to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of January next, in the said Snpreme Court, to be then and there held, that the record and proceedings aforesaid, being inspected, the said Supreme Court may cause further to be done therein, to correct that error, what of right, according to law and custom of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the second Monday of January, in the year of our Lord one thousand eight hundred and forty, and of the Independence of the United States the 64th.

[L. S.]

Issued 22d day of December, A. D. 1840.

G. M. RAGSDALE,
Clerk U. S. Dist. Court, North. Dist. Mississippi.

Filed 22d December, A. D. 1840, in my office.

G. M. RAGSDALE,
Clerk.

Exemplification.

NATHAN SMITH
vs.
REAL ESTATE BANKING COMPANY OF COLUMBUS. } 357.

Pleas had at a district court of the United States, for the Northern district of Mississippi, began and held at the town Pontotoc, in said district, on the first Monday of December, in the year of our Lord one thousand eight hundred and thirty-nine.

Present: the honorable Samuel J. Gholson, Esquire, judge of said court.

Be it remembered, that on the seventh day of November, A. D. 1839, Nathan Smith, who is a citizen of the State of Alabama, sued out of the office of the clerk of the district court of the United States for the northern district of Mississippi, his certain summons, in the words and figures following, to wit:

UNITED STATES OF AMERICA,
Northern District of Mississippi, ss.

The President of the United States to the Marshal of the Northern District of Mississippi, greeting:

We command you without delay, to summon Daniel W. Wright, Daniel F. Alexander, Edwin F. Watkins, Lemuel N. Fields, Madison Walthall, Reading S. Blount, Richardson Owen, Edward Featherston, James Eckford, William Covington, McKinney Holderness, Seth Peebles, William B. Lightfoot, William P. Puller, Elisha H. Sharp, Richard Meade, William Dowsing, senior, James Jones, Ewing F. Calhoun, William Woodward, Richard H. Brown, John B. Jones, John D. Amis, Alexander Sorsby, William Dowsing, jr., William W. Humphries and Armstrong J. Hodges, surviving partners of William Cockrell, deceased, using the joint name and style of Real Estate Banking Company of Columbus, Mississippi, who are citizens of the State of Mississippi, that they be and appear before the district court of the United States, to be held at the town of Pontotoc, in and for the northern district of Mississippi, on the first Monday of December next, to answer to Nathan Smith, who is a citizen of the State of Alabama, of a plea of tresspass on the case upon promises, &c., to the damage of the plaintiff five thousand dollars, &c., and that they do file their plea or defence with the clerk of said court, on or before the meeting of the same, or judgment will be given against them by default, and have then there this writ.

Witness, Samuel J. Gholson, Esquire, judge of said court, at Pontotoc, in said district, this seventh day of November, A. D. 1839, and the Independence of the United States the 64th.

[L. S.]

G. M. RAGSDALE.
Clerk.

Which summons is endorsed as follows, to wit:

"This action of assumpsit is founded on a certificate of deposite, which is in the following words and figures, to wit:

"Real Estate Banking Company of Columbus, Mississippi, No. 216.

COLUMBUS, *October* 31*st*, 1839.

I certify, that Nathan Smith has deposited in this bank, to the credit of himself, two thousand five hundred and sixty dollars, which sum is payable to the said Nathan Smith or to his order, this certificate being surrendered, with eight per cent. interest per annum from date, payable only at the counter.

$2,560 R. T. HOSKINS,
Cashier.

The declaration containing the common counts, having been filed at the time of issuing this writ, judgment will be required at the return term thereof.

YOUNG and BLEDSOE,
Plaintiff's Attorneys."

Upon which said summons, the marshal made the following return, to wit:

"Executed on the 8th November, 1839, on the defendants, McKinney Holderness, and Reading S. Blount, by leaving a true copy at their place of abode, with a free white person over the age of sixteen years.

Executed the same day on the defendants, L. N. Fields, Madison Walthall, Richardson Owen, James Eckford, William P. Puller, E. H. Sharpe, William Dowsing, senior, James Jones, Ewing F. Calhoun, A. W. Sorsby, William W. Humphries, Edwin F. Watkins, and A. J. Hodges, by deliving each of them a true copy in person.

A. G. WIER,
Marshal Northern District Mississippi.
By J. W. CARROLL,
Deputy.

"Executed on the 12th day of November, 1839, on the defendant, Jno. D. Amis, by leaving a true copy at his place of abode, with a free white person over the age of sixteen years. Executed same day on defendants, D. F. Alexander and Seth Peebles, by delivering each of them a true copy in person.

A. G. WEIR,
Marshal No. Dis. Miss.
By ROB. WEIR,
Deputy."

"Executed the 9th Nov., 1839, on defendants, Wm. Dowsing, Jr., and Wm. Woodward, by delivering them a true copy in person.

A. G. WEIR,
Marshal No. Dis. Miss.
By W. C. BIBB,
Deputy."

"Executed 11th November, 1839, on defendant R. E. Meade. Executed November 12th, 1839, on defendant E. Featherston. Executed November 13th, 1839, on defendant, D. W. Wright, by leaving a true copy at the residence of each of the defendants with a free white person over the age of sixteen years. Executed on defendant W. B. Lightfoot, November 11th, 1839, by leaving a true copy at his place of residence with a free white person over the age of sixteen years.

A. G. WEIR,
Marshal No. Dis. Miss.
GEO. M. MULLEN,
Deputy."

"Executed 12th November, 1839, on defendant, John B. Jones, by leaving a true copy at his residence with his wife, who is above the age of sixteen years. Executed November 11th, 1839, on defendant, R. H. Brown, by delivering him a true copy in person.

A. G. WEIR,
Marshal No. Dis. Miss.
By A. C. BURGESS,
Deputy."

"Executed 12th November, 1839, on defendant, Wm. Covington, by delivering him a true copy in person.

A. G. WEIR,
Marshal No. Dis. Miss.
By M. M. CARRINGTON,
Deputy."

And the said plaintiff by attorney, filed at the time of issuing said summons, his declaration, in the words and figures following, to wit:

DISTRICT COURT FOR THE NORTHERN DISTRICT OF MISSISSIPPI.
Northern District of Mississippi, ss.

December Term, 1839.

Nathan Smith, who is a citizen of the State of Alabama, by attorney complains of Daniel W. Wright, Daniel F. Alexander, Edward F. Watkins, Lemuel N. Fields, Madison Walthall, Reading S. Blount, Richardson Owen, Edward Featherston, James Eckford,

William Covington, McKinney Holderness, Seth Peebles, William B. Lightfoot, William P. Puller, Elisha H. Sharpe, Richard E. Meade, William Dowsing, senior, James Jones, Ewing F. Calhoun, William Woodward, Richard H. Brown, John B. Jones, John D. Amis, Alexander Sorsby, William Dowsing, junior, William W. Humphries, and Armstrong J. Hodges, surviving partners of William Cockrell, deceased, using the name and style of "Real Estate Banking Company of Columbus, Mississippi," who are citizens of the State of Mississippi in custody, &c., of a plea of trespass on the case upon promises, &c. For, that, whereas the said defendants heretofore, to wit, on the 31st day of October, A. D. 1839, at Columbus, to wit, in the district aforesaid, made a certain promissory note, commonly called a certificate of deposite, in writing, which is in the words and figures following, to wit:

"Real Estate Banking Company of Columbus, Mississippi, No. 216.

COLUMBUS, *October* 31*st*, 1839.

I certify that Nathan Smith has deposited in the bank to the credit of himself, two thousand five hundred and sixty dollars, which sum is payable to the said Nathan Smith or to his order, this certificate being surrendered, with eight per cent. interest per annum from date, payable only at the counter.

R. T. HOSKINS,
Cashier.

$2,560.

Endorsed No. 216.

Two thousand five hundred and sixty dollars with eight per cent. interest per annum.

Which said promisory note, commonly called a certificate, has the following words written across the face of it, to wit: "Number two hundred and sixteen, two thousand five hundred and sixty dolars with eight per cent. interest per annum," (meaning eight per cent. interest per annum,) and then and there delivered the same to the plaintiff; and the said plaintiff further avers that afterwards, to wit: On the sixth day of November, 1839, at Columbus, in said district, the said promissory note, commonly called a certificate of deposite, was duly presented and shown for payment at the counter of the banking-house of said defendants, and payment then and there demanded by the said plaintiff which was refused. By means whereof, and by force of the statute in such case made and provided, the said defendants then and there became liable to pay the said plaintiff the said sum of money in said promissory note, commonly called a certificate of deposite, specified according to the tenor and effect of said promissory note, commonly called a certificate of de-

posite, and being so liable, they, the said defendants, in consideration thereof afterwards, to wit: On the day and year aforesaid, at Columbus in said district, undertook and then and there faithfully promised the said plaintiff to pay him the said sum of money in the said promissory note, commonly called a certificate of deposite, specified according to the tenor and effect thereof.

And whereas, also, said defendants afterwards, to wit: On the day and year last aforesaid, at Columbus, in said district, was indebted to the said plaintiff in the further sum of two thousand five hundred and sixty dollars, lawful money, for so much money by the said defendants before that time had and received to and for the use of the said plaintiff, and being so indebted they, the said defendants, in consideration thereof afterwards, to wit: On the day and year last aforesaid, at Columbus, in said district, undertook and then and there faithfully promised the said plaintiff to pay him the said last-mentioned sum of money when they, the said defendants, should be thereunto afterwards requested. And whereas, also, the said defendants afterwards, to wit: On the day and year last aforesaid, at Columbus in said district, accounted with the said plaintiff of and concerning divers other sums of money from the said defendants to the said plaintiff before that time, due and owing, and then in arrear and unpaid, and upon such accounting the said defendants was then and there found to be in arrear and indebted to the said plaintiff in the further sum of two thousand five hundred and sixty dollars of like lawful money, and being so found in arrear and indebted, they, the said defendants, undertook and then and there faithfully promised the said plaintiffs to pay him the said last-mentioned sum of money when they, the said defendants, should be thereunto afterwards requested. Yet the said defendants not regarding their said several promises and undertakings so by them made as aforesaid, have not as yet paid the said several sums of money, or any or either of them, or any part thereof to the said plaintiff, although often requested to do so, but the said defendants to pay him the same hath hitherto wholly neglected and refused, and still doth neglect and refuse, to the damage of the plaintiff five thousand dollars, and therefore he sues.

YOUNG AND BLEDSOE,
Att'y for Pl'ff."

And the said defendants, by attorney, endorsed the following plea on said declaration, to wit:

" And the said defendants, by attorney, plead *non assumpsit;* in short, by consent of counsel.

EVANS AND HARRISON,
Atty's for Defft's."

"NATHAN SMITH
vs.
THE REAL ESTATE BANKING CO.

And the said defendant, Daniel W. Wright, comes and defends the wrong and injury when, &c., and says that he did not undertake or promise in manner and form as the said plaintiff hath above thereof complained against him, and of this he puts himself upon the country, &c.

GHOLSON AND WORD,
For Def't."

And afterwards, to wit, on the 12th day of December, A. D. 1839, being a day of the December term of said court, the following proceedings were had in the foregoing cause, to wit:

"NATHAN SMITH
vs
THE REAL ESTATE BANKING CO. } 171. Thursday, Dec. 12th, 1839.

This day came the parties, by their attorneys, and the said plaintiff discontinues this suit as to the defendant, Daniel W. Wright, the other defendants having withdrawn their plea and said nothing further in bar or preclusion of plaintiff's action, it is therefore considered by the court that plaintiff recover of the defendants aforesaid, except D. W. Wright, the sum of two thousand five hundred and eighty-two dollars and seventy-four cents, the damages which he has sustained by reason of the non-performance of the promise and assumption in the declaration mentioned, and also the cost in this cause expended."

UNITED STATES OF AMERICA,
Northern District of Mississippi.

I, G. M. Ragsdale, clerk of the district court of the United States for the northern district of Mississippi, do hereby certify, that the foregoing record is a true and perfect transcript of all the proceedings that were had in the foregoing cause in said district court.

Given under my hand, at office in Pontotoc, this 10th day of October, A. D. 1840.

G. M. RAGSDALE,
Clerk."

And also, afterwards, to wit, at a term of said court begun and held at the town of Pontotoc in said district, on the first Monday of December, A. D. 1840, the following proceedings were had in the foregoing cause, to wit:

"NATHAN SMITH
No. 23. *vs.*
Fi. fa. $2,693 74
DANIEL F. ALEXANDER et al. } Monday, December the 14th, 1840.

This day came on to be heard the following motion, to wit:

"The defendants, John D. Amis, and security, by attorney, moves the court now here to quash the supposed forthcoming bond taken in this cause for the following reasons, viz: First, because the taking or executing the same bond is extortion and illegal, in this that it causes the increase of cost not warranted by law, and that there is no authority of law for taking same bond or any such bond, and that said bond creates a judgment against defendants security without the aid of a court, and precludes defendants and security from appearing in court to defend themselves, and also deprives the defendants of the right of trial by a jury, secured by the constitution of the United States.

And second, because said supposed bond releases some of the defendants, and is otherwise defective and illegal upon the face thereof. December 14th, 1840.

T. M. TUCKER,
Att'y for Defendants and Security of forthcoming Bond."

And upon hearing the same, ordered by the court, that the same be overruled, to which decission of the court the defendants, attorney excepted, and tendered his bill of exceptions, which was signed and sealed and ordered to be made a part of the record in this cause, whereupon, &c.

Bill of exceptions.

THE UNITED STATES OF AMERICA,
Northern District of Mississippi.

NATHAN SMITH, Plaintiff,
No. 23, *vs.*
Fi. fa. for $2,693 74-100,
returable to December
term 1840. } United States District Court for the Northern District of Mississippi, to wit: December Term A. D. 1840.

Daniel F. Alexander, Edwin F. Watkins, Lemuel N. Fields, Madison Walthall, Reading S. Blount, Richardson Owen, Edward Featherston, James Eckford, William Covington, M'Kinney Holderness, Seth Peebles, William P. Lightfoot, William P. Puller, Elisha H. Sharp, Richard E. Meade, William Dowsing, Sen., James Jones, Ewing F. Calhoun, William Woodward, Richard H. Brown, John B. Jones, John D. Amis, Alexander Sorsby, William Dowsing, Jr. and William W. Humphries, Armstrong J. Hodges, surviving partners of William Cockrell deceased using the name and style of Real Estate Banking Company of Columbus, Mississippi, defendants.

Be it remembered, that at the present term of this court, the court being held by the honorable Samuel J. Gholson, judge of the district court of the United States for the northern district of Mississippi, that Adolphus G. Wier, marshal of the United States for the northern district of Mississippi, returned into the office of Gabriel M. Ragsdale, Esquire, clerk of this court, the writ of fieri facias issued in this cause by the clerk of this court, which writ of fieri facias is in the words and figures following, to wit:

The President of the United States, to the Marshal of the Northern District of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements of Daniel F. Alexander, Edwin F. Watkins, Lemuel N. Fields, Madison Walthall, Reading J. Blount, Richardson Owen, Edward Featherston, James Ecford, William Covington, McKinney Holderness, Seth Peebles, William B. Lightfoot, William P. Puller, Elisha H. Sharpe, Richard E. Meade, William Dowsing, Sen., James Jones, Ewing F. Calhoun, William Woodward, Richard H. Brown, John B. Jones, John D. Amis, Alexander Sorsby, William Dowsing, Jun., William W. Humphries and Armstrong J. Hodges, surviving partners of William Cockrell, deceased, using the name and style of "Real Estate Banking Company of Columbus, Mississippi," late of your district, you cause to be made the sum of twenty-five hundred and eighty-two dollars and seventy-four cents, which Nathan Smith lately in the district court of the United States for the northern district of Mississippi, has recovered against them for his damages which he has sustained by reason of the non-performance of a certain promise and assumption by the said defendants, surviving partners as aforesaid, to the said Nathan Smith, offered with interest on the said sums, at eight per centum per annum, from the twelfth day of December 1839 until paid; also the sum of one hundred and eleven dollars and—cents for his costs by him about his suit, in that behalf expended, whereof the said defendants, surviving partners as aforesaid, are convicted, as appears of record. And that you have the said monies before the judge of the said district court, on the first Monday in December next, to render to the said Nathan Smith for his damages and costs aforesaid. And have then there this writ.

Witness, the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June A. D. 1840, and in the 64th year of the Independence of the United States.

[L. S.]

Issued the twenty-seventh day of June A. D. 1840.

G. M. RAGSDALE, *Clerk*.

UNITED STATES OF AMERICA, *ss.*
Northern District of Mississippi.

Clerk's Fees.	Doll.	Cents.
Issuing writ	3	33 1-3
Docketing		66 2-3
Filing papers	1	00
Entering appearances	1	33 1-3
Motion		66 2-3
Order		
Judgment by default	1	33 1-3
Swearing witnesses		
Continuance		
Venire facias		
Swearing and empanneling jury		
Receiving and entering verdict		
Entering judgment final		
Subpœnas		
Taxing cost and copies	1	00
Execution and docketing	3	16 2-3
Entering return and filing		66 2-3
Commissions		
Copies of interrogatories		
Entering discontinuance	1	33 1-3
Making up record	6	00
Certificate		66 2-3
This execution and docketing	3	33 1-3
Entering return and filing		66 2-3
	24	00
Attorney's tax fee	10	00

Marshal's Fees.		
Serving writ, docketing and return	54	00
Bail bond		50
27 copies of writ	13	50
Summoning witnesses		
Mileage	9	00
Commissions	77	00
	$111	00

Upon which said writ of fieri facias is a written endorsement, which is in the words and figures following, to wit:

"Levied this execution on the 13th day of July 1840, on the following named negroes, the property of the defendant John D. Amis, to wit: Mason, Joe, Crimp, Patty, Barrock, Sally and infant, Channy, Prince and Sella, and Tom Perkins, slaves for

life, and took a forthcoming bond with Sam. F. Butterworth as security for the delivery of said property to Adolphus G. Wier, marshal of the northern district of Mississippi, at the court house of the county of Lowndes, on the first Monday of August, 1840, to be disposed of according to law, which said bond is herewith returned "forfeited', by

ADOLPHUS WEIR,
Marshal North. Distr. Mississippi."

"Marshal's Fees.

Levying, entering and returning -	54 50
Bond - - - .	1 00
Mileage - - - -	9 00
1-2 commissions - - -	28 44
	$92 94"

And the said Adolphus G. Weir, marshal as aforesaid, returned with said writ of fieri facias into the office of the clerk of this court, a certain writing obligatory, which writing obligatory is in the words and figures following, viz:

"Know all men by these presents, that we, John D. Amis and Sam. F. Butterworth of Lowndes county, State of Mississippi, are held and firmly bound unto Nathan Smith in the just and full sum of five thousand three hundred and eighty-seven dollars and forty-eight cents, lawful money of the United States, to be paid to the said Nathan Smith, his executors, administrators, or assigns: to which payment well and truly to be made, we bind ourselves and each of us, our executors and administrators jointly and severally, firmly by these presents, sealed with our seals and dated this 13th day of July eighteen hundred and forty. The condition of this obligation is such, that whereas Nathan Smith has sued out of the district court of the United States for the northern district of Mississippi, a writ of fieri facias against the goods and chattels, lands and tenements of Daniel F. Alexander, Edwin F. Watkins, Lemuel N. Fields, Madison Walthall, Reading S. Blount, Richardson Owen, Edward Featherston, James Eckford, William Covington, McKenney Holderness, Seth Peebles, William B. Lightfoot, William P. Puller, Elisha H. Sharp, Richard E. Meade, William Dowsing, Sen., James Jones, Ewing F. Calhoun, William Woodward, Richard H. Brown, John B. Jones, John D. Amis, Alexander Sorsby, William Dowsing, Jr., William W. Humphries and Armstrong J. Hodges, surviving partners of William Cockrell deceased, *deceased* using the name and style of "Real Estate Banking Company of Columbus, Mississippi," for the sum of twenty-five hundred and eighty-two dollars and twenty-four cents, with interest thereon from the 12th day of December eighteen hundred and thirty-nine, on said sum, at 8 per cent. per annum until paid, and

the sum of one hundred and eleven dollars and—cents for his costs incurred thereon; which writ of fieri facias has been levied upon the following described property of said defendant John D. Amis, to wit: Mason, Joe, Crimp, Patty, Barrock, Sally and infant, Channy, Prince, Sella and Tom Perkins, which said property is suffered to remain in the possession of the above bound John D. Amis, upon his executing this bond with the above named Sam. F. Butterworth.

Now if the above bound John D. Amis and Sam. F. Butterworth do and shall well and truly deliver the said property to Adolphus G. Weir, marshal of the northern district of Mississippi, at the court house of the county of Lowndes, on the first Monday of August next evening, by twelve o'clock M. of that day, to be disposed of according to law, in discharge of the aforesaid writ of fieri facias; then and in that case the above obligation to be null and void, otherwise to remain—full force and virtue."

JOHN D. AMIS. [L. S.]
SAM. F. BUTTERWORTH. [L. S.]
[L. S.]

Upon which writing obligatory is endorsed the words and figures following, to wit: "The property mentioned in the within bond, not having been delivered according to the conditions thereof, is declared by the marshal "forfieted" on the 1st Monday of August 1840."

ADOLPHUS G. WEIR,
Marshal North. Distr. Mississippi.

And that on this day, being the 14th day of December A. D. 1840, and the seventh day of the present term of this court, and at the return term of said writ of fieri facias, the said defendant John D. Amis and the said Sam. F. Butterworth, the security on said writing obligatory, by their attorney, filed with the clerk of this court, a motion of writing, which motion is in the words and figures following, to wit:

NATHAN SMITH, Plaintiff,
No. 23, *vs.*
Fieri facias for $2,693 74–100,
DANIEL F. ALEXANDER, et al., Defendants.

The defendant John D. Amis, and security Sam. F. Butterworth, by attorney, move the court now here to quash the supposed forthcoming bond taken in this cause for the following reasons, viz:

First. Because the taking or executing the same bond is extortion and illegal in this, that it causes an increase of costs not warranted by law, and that there is no authority of law for taking the same bond or any such bond, and that the said bond creates a judgment against defendant and security without the aid of a court,

and precludes defendant and security from appearing in court to defend themselves, and deprives defendant and security of the right of trial by jury, secured by the constitution of the United States.

And 2d. Because said supposed bond releases some of the defendants, and is otherwise defective and illegal upon the face thereof.

T. M. TUCKER,
Attorney for Defendant and security on forthcoming bond.

Which said motion in writing is by the clerk of this court duly entered on the motion docket of this court according to the rules of this court. And that this day, being the seventh day of the present term of this court, and the return term of said writ of fieri facias, came the parties by their attorneys, and thereupon came on to be argued and heard by the court now here, the said motion of said defendant John D. Amis, and said Sam. F. Butterworth security on said forthcoming bond, to quash the said forthcoming bond, taken by the marshal and returned in this cause; and after argument of counsel for the said John D. Amis and Sam. F. Butterworth, in support of said motion, as well as the counsel for the plaintiff in said writ of fieri facias against it: It is considered, ordered and adjudged by the court now here, that said motion be overruled, and that said John D. Amis and Sam. F. Butterworth, take nothing by their motion, and pay the costs in this behalf expended. To which opinion, order and judgment of the court now here, had, given and rendered, the said John D. Amis, defendant, and the said Sam. F. Butterworth, security on said forthcoming bond, by attorney except, and tender this bill of exceptions to the opinion, order and judgment of the court now here, and pray that the same bill of exceptions may be signed and sealed by his honour, the judge presiding in this court and cause, which is done accordingly.

S. J. GHOLSON. [L. S.]

Copy of Execution.

The President of the United States to the Marshal of the Northern District of Mississippi, greeting:

We command you, that of the goods and chattels, lands and tenements of Daniel F. Alexander, Edwin F. Watkins, Lemuel N. Fields, Madison Walthall, Reading S. Blount, Richardson Owen, Edward Featherston, James Eckford, William Covington, McKinney Holderness, Seth Peebles, William B. Lightfoot, William P. Puller, Elisha H. Sharpe, Richard E. Mead, William Dowsing, sr., James Jones, Ewing F. Calhoun, William Woodward, Richaid H. Brown, John B. Jones, John D. Amis, Alexander W. Sorsby, William Dowsing, junior, William W. Humphries and Armstrong J.

Hodges, surviving partners of William Cockrell, deceased, using the name and style of "Real Estate Banking Company, of Columbus, Mississippi," late of your district, you cause to be made the sum of twenty-five hundred and eighty-two dollars and seventy-four cents, which Nathan Smith, lately in the district court of the United States for the northern district of Mississippi, has recovered against them, for his damages which he has sustained by reason of the non-performance of a certain promise and assumption by the said defendants, surviving partners as aforesaid, to the said Nathan Smith, offered with interest on the said sum, at eight per centum per annum, from the twelfth day of December, 1839, till paid; also the sum of one hundred and eleven dollars and —— cents, for his costs by him about his suit, in that behalf expended, whereof the said defendants, surviving partners as aforesaid, are convicted, as appears of record. And that you have the said monies before the judge of the said district court, on the first Monday in December next, to render to the said Nathan Smith for his damages and costs aforesaid. And have then and there this writ.

Witness, the honorable Samuel J. Gholson, judge of the district court of the United States, for the northern district of Mississippi, at Pontotoc, the first Monday of June, A. D. 1840, and in the 64th year of the Independence of the United States.

Issued the twenty-seventh day of June, A. D. 1840.

G. M. RAGSDALE,
Clerk.

Marshal's Return on Execution, to wit:

Served this execution on the 15th day of July, 1840, on the following named negroes, the property of the defendant, John D. Amis, to wit, Mason, Joe, Crimp, Patty, Barrock, Sally and infant, Chaney, Prince, Sella and Tom Perkins, slaves for life, and took a forthcoming bond, with Samuel F. Butterworth as security for the delivery of said property to Adolphus G. Wier, marshal of the northern district of Mississippi, at the court house of the county of Lowndes, on the 1st Monday of August, 1840, to be disposed of according to law, which said bond is herewith returned "forfeited," by

ADOLPHUS G. WEIR,
Marshal Northern District Mississippi.

UNITED STATES OF AMERICA,
Northern District of Mississippi, ss.

Clerk's Fees.

Issuing writ - - - - - -	$3 33 1-3
Docketing - - - - - -	66 2-3

Filing papers	1 00
Entering appearances	1 33 1-3
Motion	66 2-3
Order	
Judgment by default	1 33 1-3
Swearing witnesses	
Continuance	
Venire facias	
Swearing and empanneling jury	
Receiving and entering verdict	
Entering judgment final	
Subpœnas	
Taxing costs and copies	1 00
Execution and docketing	3 16 2-3
Entering return and filing	66 2-3
Commissions	
Copies of interrogatories	
Entering discontinuance	1 33 1-3
Making up record	6 00
Certificate	66 2-3
This execution and docketing	3 16 2-3
Entering return and filing	66 2-3
	24 00
Attorney's tax fee	10 00

Marshal's Fees.

Serving writ, docketing and return	54 50
Bail bond	
27 copies of writ	13 50
Summoning witnesses	
Mileage	9 00
Commissions	77 00
	$111 00

Copy of forthcoming Bond.

"Know all men by these presents, that we, John D. Amis, and Samuel F. Butterworth, of Lowndes county, State of Mississippi, are held and firmly bound unto Nathan Smith, in the just and full sum of five thousand three hundred and eighty-seven dollars and forty-eight cents, lawful money of the United States, to be paid to the said Nathan Smith, his executors, administrators, or assigns, to which payment well and truly to be made, we bind ourselves, and each of us, our executors and administrators, jointly and

severally, firmly by these presents; sealed with our seals, and dated this 13th day of July, eighteen hundred and forty.

The condition of this obligation is such, that whereas, Nathan Smith has sued out of the district court of the United States, for the northern district of Mississippi, a writ of fieri facias, against the goods and chattels, lands and tenements of Daniel F. Alexander, Edwin F. Watkins, Lemuel N. Fields, Madison Walthall, Reading S. Blount, Richardson Owen, Edward Featherston, James Eckford, William Covington, McKinney Holderness, Seth Peebles, William B. Lightfoot, William P. Puller, Elisha H. Sharp, Richard E. Meade, William Dowsing, senior, James Jones, Ewing F. Calhoun, William Woodward, Richard H. Brown, John B. Jones, John D. Amis, Alexander Sorsby, William Dowsing, junior, William W. Humphries and Armstrong J. Hodges, surviving partners of William Cockrell, deceased, using the name and style of "Real Estate Banking Company, of Columbus, Mississippi," for the sum of twenty-five hundred and eighty-two dollars and seventy-four cents, with interest thereon, from the 12th day of December, eighteen hundred and thirty-nine, on said sum, at eight per centum per annum, until paid; and the sum of one hundred and eleven dollars and ——— cents, for his costs incurred thereon; which writ of fieri facias has been levied upon the following described property of said defendant, John D. Amis, to wit, Mason, Joe Crump, Patty, Barrock, Sally and infant, Chaney, Princi, Sella and Tom Perkins, which said property is suffered to remain in the possession of the above bound John D. Amis, upon his executing this bond with the above named Samuel F. Butterworth. Now, if the above bound John D. Amis and Samuel F. Butterworth, do, and shall, well and truly deliver the said property to Adolphus G. Wier, marshal of the northern district of Mississippi, at the court house of the county of Lowndes, on the first Monday of August next insuing, by twelve o'clock, M., of that day, to be disposed of according to law, in discharge of the aforesaid writ of fieri facias, then, and in that case, the above obligation to be null and void; otherwise, to remain in full force and virtue.

JOHN D. AMIS, [L. S.]
SAMUEL F. BUTTERWORTH. [L. S.]
[L. S.]"

Upon which said forthcoming bond, the marshal made the following return, to wit: "The property mentioned in the within bond, not having been delivered according to the condition thereof, is declared by the marshal 'forfeited' on the 1st Monday of August, 1840.

ADOLPHUS G. WIER,
Marshal Northern District Mississippi.

Copy of Bond for Appeal.

UNITED STATES DISTRICT COURT,
Northern Distrtct of Mississippi.

Know all men by these presents, that we, John D. Amis, Samuel F. Butterworth, Tilghman M. Tucker and Eli Abbott, are held and firmly bound unto Nathan Smith, in the sum five thousand three hundred and ninety-seven dollars 48 cents, to be paid to the said Nathan Smith, his executors, or administrators, to which payment well and truly to be made, we bind ourselves, and each of us, jointly and severally, firmly, by these presents, sealed with our seals, and dated December 22d, 1840.

Whereas, the above named John D. Amis, and Samuel F. Butterworth, have prosecuted an appeal to the Supreme Court of the United States, to reverse the judgment rendered against the said John D. Amis and Samuel F. Butterworth, in favor of the said Nathan Smith, in the said district court of the United States, for the northern district of Mississippi, at the December term thereof, 1840.

Now, therefore, the condition of this obligation is such, that if the above named John D. Amis and Samuel F. Butterworth, shall prosecute their said appeal to effect, and answer all damages and costs, if they shall fail to make good their plea, then this obligation shall be void; else, to remain in full force and virtue.

Sealed and delivered in the presence of

JOHN D. AMIS, [L. S.]
SAMUEL F. BUTTERWORTH, [L. S.]
ELI ABOTT, [L. S.]
T. M. TUCKER. [L. S.]

Which said bond for appeal is endorsed thus:

"I hereby approve the within bond and securities.
G. M. RAGSDALE,
Clerk."

UNITED STATES OF AMERICA,
Northern District of Mississippi.

I, G. M. Ragsdale, clerk of the district court of the United States, for the northern district of Mississippi, do hereby certify that the foregoing is a full, true and complete transcript of all the proceedings that were had in the foregoing cause in said district court.

Given under my hand, and the seal of said court, at office
[L. S.] in Pontotoc, this 15th day of January, A. D. 1841.
G. M. RAGSDALE,
Clerk.